



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645

(512) 804-4000 | F: (512) 804-4811 | (800) 252-7031 | TDI.texas.gov | @TexasTDI

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

James E. Butler, III, M.D.

Respondent Name

American Zurich Insurance Company

MFDR Tracking Number

M4-17-2030-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

March 1, 2017

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The appointment took place on 09/21/2016 and the complete/clean bill was submitted to the carrier for reimbursement on 09/29/2016 ... Zurich is refusing to process this bill despite acknowledging receipt of the claim. Based on the examination type requested and performed, the claim should be paid in full as originally billed."

Amount in Dispute: \$650.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: Submitted documentation does not include a position statement from the respondent. Accordingly, this decision is based on the information available at the time of review.

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
September 21, 2016	Designated Doctor Examination	\$650.00	\$650.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §133.2 defines terms used in the medical billing and processing chapter.
3. 28 Texas Administrative Code §133.240 sets out the procedure for medical bill processing by the workers' compensation insurance carrier.
4. 28 Texas Administrative Code §134.250 sets out the fee guidelines for examinations to determine maximum medical improvement and impairment rating provided on or after September 1, 2016.
5. Texas Labor Code §408.027 sets out provisions related to payment of health care providers.

6. The submitted documentation does not include explanations of benefits.

Issues

1. Did American Zurich Insurance Company (Zurich) respond to the medical fee dispute?
2. Did Zurich reduce or deny the disputed services not later than the 45th day after receiving the medical bill?
3. Is James E. Butler, III, M.D. entitled to reimbursement for the disputed services?

Findings

1. The Austin carrier representative for Zurich is Flahive, Ogden & Latson. Flahive, Ogden & Latson acknowledged receipt of the copy of this medical fee dispute on March 9, 2017.

28 Texas Administrative Code §133.307 states, in relevant part:

- (d) Responses. Responses to a request for MFDR shall be legible and submitted to the division and to the requestor in the form and manner prescribed by the division.
- (1) Timeliness. The response will be deemed timely if received by the division via mail service, personal delivery, or facsimile **within 14 calendar days after the date the respondent received the copy of the requestor's dispute** [emphasis added]. If the division does not receive the response information within 14 calendar days of the dispute notification, then the division may base its decision on the available information.

Review of the documentation finds that no response has been received on behalf of Zurich from Flahive, Ogden & Latson to date. The division concludes that Zurich failed to respond within the timeframe required by §133.307(d)(1). For that reason the division will base its decision on the information available.

2. In his position statement, Dr. Butler contends that “Zurich is refusing to process this bill despite acknowledging receipt of the claim.” According to Texas Labor Code Sec. 408.027(b), Zurich was required to pay, reduce, or deny the disputed services not later than the 45th day after it received the medical bill from Dr. Butler. Corresponding 28 Texas Administrative Code §133.240(a) also required Zurich to take **final action** by issuing an explanation of benefits not later than the statutorily-required 45th day. 28 Texas Administrative Code §133.2(6) defines final action as follows:

- (6) Final action on a medical bill—
 - (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or
 - (B) denying a charge on the medical bill.

Dr. Butler provided a fax confirmation page indicating that Zurich received the medical bill in question on or about September 29, 2016. Zurich was, therefore, not relieved of its requirement to pay, reduce, or deny the disputed services not later than the 45th day after it received the medical bill from Dr. Butler, in accordance with Texas Labor Code Sec. 408.027(b). When the insurance carrier receives a medical bill, it is obligated to take the following actions pursuant to 28 Texas Administrative Code §133.240:

- (a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill...**not later than the 45th day** [emphasis added] after the insurance carrier received a complete medical bill...
- (e) The insurance carrier **shall send the explanation of benefits** [emphasis added] in accordance with the elements required by §133.500 and §133.501 of this title...The explanation of benefits shall be sent to:
 - (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill...

All workers compensation insurance carriers are expected to fulfill their duty to take final action as required by the division’s statutes and adopted administrative rules. The division finds that:

- no evidence was presented to the division to support that Zurich took final action by paying, reducing, or denying the services in dispute within 45 days; and
- no evidence was presented to the division to support that Zurich timely presented **any** defenses to Dr. Butler on an explanation of benefits as required under 28 Texas Administrative Code §133.240 prior to the request for medical fee dispute resolution.

Absent any evidence that Zurich raised defenses that conform to the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division concludes that the services in question are eligible for review for reimbursement in accordance with applicable rules and guidelines.

3. Dr. Butler is seeking reimbursement of \$650.00 for a designated doctor examination to determine maximum medical improvement (MMI) and impairment rating (IR) performed on September 21, 2016.

Per 28 Texas Administrative Code §134.250(3), "The following applies for billing and reimbursement of an MMI evaluation... (C) An examining doctor, other than the treating doctor, shall bill using CPT Code 99456. Reimbursement shall be \$350." The submitted documentation supports that Dr. Butler performed an evaluation to determine maximum medical improvement. Therefore, the reimbursement for this examination is \$350.00.

Per 28 Texas Administrative Code §134.250(4), "The following applies for billing and reimbursement of an IR evaluation. ... (C)(ii) The MAR for musculoskeletal body areas shall be as follows. ... (II) If full physical evaluation, with range of motion, is performed: (-a-) \$300 for the first musculoskeletal body area." The submitted documentation supports that Dr. Butler provided an impairment rating, which included a musculoskeletal body part, and performed a full physical evaluation with range of motion of the lumbar spine. Therefore, the reimbursement for this examination is \$300.00.

The total reimbursement for the disputed services is \$650.00. This amount is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$650.00.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$650.00, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

	Laurie Garnes	April 21, 2017
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.